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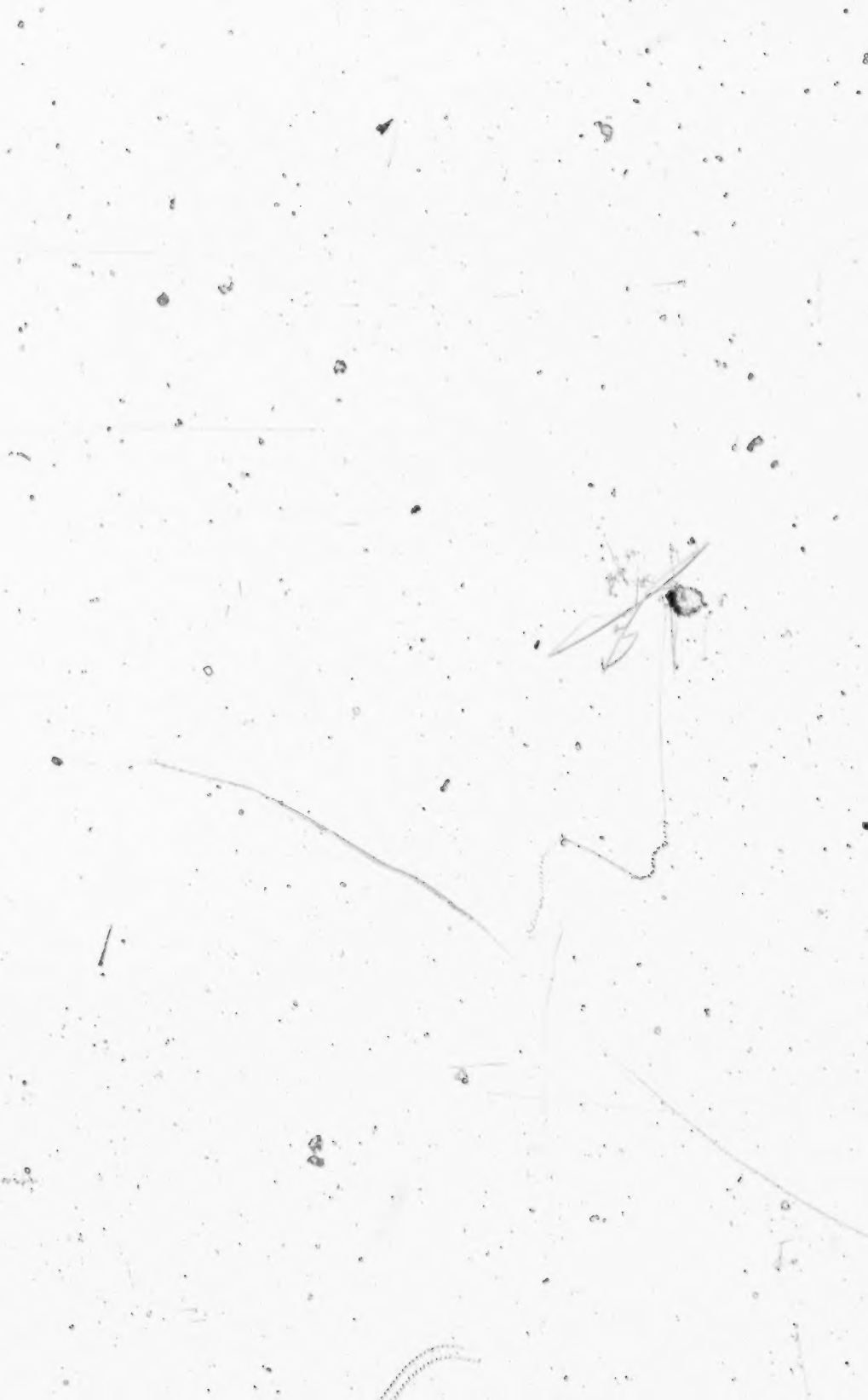

In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 154

IDEAL FARMS, INC. AND FRANKLIN LAKES DAIRY PRODUCERS, INC., *Petitioners*

v.

ORVILLE L. FREEMAN, SECRETARY OF AGRICULTURE OF THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the District of New Jersey (Pet. App. 44-63) is reported at 181 F. Supp. 62. The opinion of the United States Court of Appeals for the Third Circuit (Pet. App. 64-87) is reported at 288 F. 2d 608.

JURISDICTION

The judgment of the Court of Appeals was entered on February 27, 1961 (Pet. App. 88). A timely petition for rehearing was denied on March 23, 1961. The petition for a writ of certiorari was filed on June 16, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Secretary of Agriculture exceeded his authority under the Agricultural Marketing Agreement Act of 1937, as amended, by promulgating Milk Marketing Order No. 27, insofar as certain provisions of that order make handlers of milk accountable to the Producer Settlement Fund with respect to milk which the handlers themselves produce, in their capacity as producers, and market in their capacity as handlers.

STATUTE AND REGULATION INVOLVED

The pertinent provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and Milk Marketing Order No. 27 are set forth in the Appendix, *infra*, pp. 16-20.

STATEMENT

A. The Regulatory Background

The Agricultural Marketing Agreement Act of 1937, 50 Stat. 246, as amended, 7 U.S.C. 601, *et seq.*, establishes a system for regulating the marketing of certain agricultural commodities, including milk, insofar as they are in the current of, or affect, interstate or foreign commerce. Its express purpose is to promote and maintain such orderly marketing conditions "as will establish, as the prices to farmers, parity prices * * *" and as will avoid unreasonable fluctuations in supplies

and prices. 7 U.S.C. 602. But whenever the parity prices are unreasonable with respect to milk in a particular marketing area, in view of the relevant economic factors in that area, the Act directs the fixing of such prices for the marketing area as will reflect the economic factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest. 7 U.S.C. 608c(18).

To achieve these purposes, the Act authorizes the Secretary of Agriculture to issue marketing orders, effective within regional production or marketing areas, which are applicable to persons engaged in the distribution of milk and milk products. See 7 U.S.C. 608c. These persons are called "handlers", a term defined in 7 U.S.C. 608c(1) to mean "processors, associations of producers, and others engaged in the handling of * * *" milk.

The Act also outlines the provisions which a milk order may contain. An order may provide for "[c]lassifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay * * * for milk purchased from producers or associations of producers." 7 U.S.C. 608c(5)(A) (App., *infra*, p. 16). It may also provide "for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered * * *." 7 U.S.C. 608c(5)(B)(ii) (App., *infra*, p. 17). To achieve these purposes, a milk order may provide "a method for making adjustments in payments, as among handlers (including producers who are also handlers),

to the end that the total sums paid by each handler shall equal the value of the milk purchased by him" as determined by the class prices fixed. 7 U.S.C. 608c(5)(C); (App., *infra*, p. 17). The Act further provides that no order "shall be applicable to any producer in his capacity as a producer." 7 U.S.C. 608c (13) (B) (App., *infra*, pp. 17-18).

Milk Marketing Order No. 27 was promulgated by the Secretary of Agriculture in 1938 to regulate the handling of milk in the New York metropolitan marketing area.[1] 3 F.R. 1945, 1957, 2100, 2102. In 1957 the order was amended to extend the marketing area to Northern New Jersey and certain additional areas in New York. 22 F.R. 4643. The plan set out by the order is generally characterized as a market-wide pool and requires the classification, pooling, and pricing of all milk delivered by producers or associations of producers to "pool plants".[2]

In recognition of the fact that the value of milk is dependent upon the use made of it, the milk is classified according to its utilization (*i.e.*, as fluid milk or a derivative product), and minimum prices are set for each

[1] This Court has, in the past, noted the unique problems of the milk industry, arising from the intrinsic nature of its product. *Nebbia* v. *New York*, 291 U.S. 502, 516-518; *United States* v. *Rock Royal Co-op.*, 307 U.S. 533, 549-550. In the *Rock Royal Co-op.* case, in which the Court upheld the constitutionality of the Agricultural Marketing Agreement Act of 1937, it also considered and sustained certain provisions of Order No. 27.

[2] The order provides for the designation as pool plants of such establishments for the receiving, handling, or processing of milk or milk products as meet the requirements specified. 7 C.F.R. 927.25-927.29. The pool plants are, in the main, those establishments which handle milk primarily for the marketing area defined in the order.

use classification. 7 C.F.R. 927.30-927.46. Pursuant to the Milk Marketing Order, each pool plant handler is required to file a monthly report with the Market Administrator, indicating the total quantity of milk received by him from all sources, including milk of his own production, and the use which was made of the milk. 7 C.F.R. 927.50. The handler's pool obligation is determined by multiplying the amount of milk in each class by the class price and adding the resulting figures. 7 C.F.R. 927.65.

On the basis of the data for all handlers, the Market Administrator calculates a "uniform" or "blend" price[3] which is the minimum price per unit which each pool plant handler must then pay to all his producers, regardless of the uses to which the individual handler puts the milk. 7 C.F.R. 927.70.

Although the producers receive a uniform minimum price for their milk, the minimum prices actually paid by each handler are geared to the uses to which he puts his milk. The handlers' minimum prices are "equalized" through the medium of the "Producer Settle-

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[3] The formula underlying the blend price has been described as follows (*Grant* v. *Benson*, 229 F. 2d 765, 767, (C.A.D.C.), certiorari denied, 350 U.S. 1015):

> The Market Administrator computes the value of milk used by each pool handler by multiplying the quantity of milk he uses in each class by the class price and adding the results. The values for all handlers are then combined into one total. The amount is decreased or increased by several subtractions or additions * * *. The result is divided by the total quantity of milk that is priced under the regulatory program. The figure thus obtained is the basic or uniform price which must be paid to producers for their milk. * * *

ment Fund", maintained by the Market Administrator. 7 C.F.R. 937.75. The Administrator multiples the quantity of milk received by each handler from producers by the blend price. He then compares the resulting figure with the handler's pool obligation. A handler whose pool obligation is higher than the resulting figure pays the difference into Producer Settlement Fund, whereas a handler whose pool obligation is lower than the resulting figure receives the difference from the Fund. 7 C.F.R. 927.79.

By virtue of Section 927.65 of the Order, effective August 1, 1957, 22 F.R. 4652-4653 (App., *infra*, pp. 18-19), a handler must, with certain exceptions,[4] include, in the computation of his pool obligation, milk which he has produced on his own farm or farms and disposed of as a handler. Accordingly, handlers are made accountable to the Producer Settlement Fund with respect to their utilization of milk which they themselves produce, as well as with respect to their utilization of milk obtained from other producers.

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[4] The section, as promulgated in 1957, permitted the exclusion from the computation of the handler's net pool obligation of (1) milk from certain New York sources; "(2) [m]ilk received at a handler's plant not in excess of an average of 800 pounds per day from such handler's own farm in the event that no milk is received at such plant from other dairy farmers but is received from other plants"; and "(3) [a]ll milk received at a handler's plant from such handler's own farm in the event that no milk is received from any other source at such plant." 7 C.F.R. 927.65(h), 22 F.R. 4652-4653 (App., *infra*, p. 19). In 1958, this exclusion provision was further amended, but not in any respect material to the issue present here. See 7 C.F.R. 927.65(h), as amended, 23 F.R. 6737, 6739-6740 (App., *infra*, p. 20).

B. The Proceedings Below

Petitioner Ideal Farms, Inc., operates a milk processing plant in North Haledon, New Jersey, and is a handler regulated under Order No. 27. It obtains milk from several farms which it leases and operates, and also buys milk from other milk plants (Pet. App. 65). Petitioner Franklin Lakes Dairy Producers, Inc., similarly is a New Jersey milk handler under Order No. 27. It obtains milk produced on its own farms, and, in addition, buys milk from other dairy farmers (Pet. App. 65).

On August 1, 1957, petitioners filed petitions with the Secretary of Agriculture, pursuant to Section 8c (15)(A) of the Agricultural Marketing Agreement Act of 1937, 7 U.S.C. 608c(15)(A), alleging, *inter alia*, that Section 927.65 of Order No. 27, insofar as it included the milk produced on petitioners' own farms in the calculation of their obligations to the Producer Settlement Fund, was not authorized by the Act (Pet. App. 27. Petitioners reasoned that, since Section 8c(5), 7 U.S.C. 608c(5) (App., *infra*, pp. 16-17) authorizes the formulation of a regulatory scheme only with respect to milk "purchased" from producers, it follows that milk obtained by a handler from his own farms—which has not been "purchased" in the commercial sense—is not subject to regulation.

In his recommended decision, the Hearing Examiner concluded that the petitions should be dismissed (Pet. App. 15-25). Subsequently, the Judicial Officer, acting on behalf of the Secretary, considered petitioners' contentions and entered an order dismissing the petitions (Pet. App. 26-43). Pursuant to Section 8c (15)(B) of the Act, 7 U.S.C. 608c(15)(B), petitioners then filed in the district court a suit for

review of the Secretary's ruling. The district court held that the Secretary of Agriculture did not exceed his authority under the Act by promulgating Section 927.65 of the Order, which makes a handler accountable to the Producer Settlement Fund for milk produced on his own farms. Accordingly, the court entered summary judgment in favor of the Secretary (Pet. App. 44-63).

On appeal, the Court of Appeals for the Third Circuit affirmed (Pet. App. 64-84). Judge Hastie noted his "regretful * * * dissent" from the court's opinion (Pet. App. 85-87). Although he conceded that the result reached by the court was "equitable and advance[d] the overall scheme and purpose of the Act" (Pet. App. 86), he concluded, in support of petitioners' position, that the word "purchased" must be construed in a limited sense.

ARGUMENT

Petitioners seek review in this Court of the holding below that the Secretary of Agriculture did not exceed his authority under the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. 601, *et seq.*, by promulgating Milk Marketing Order No. 27 insofar as Section 927.65 of the Order (App., *infra*, pp. 18-19) regulates handlers of milk with respect to their own farm production. That holding, in our view, is correct. Moreover, it does not conflict with decisions of this Court or other courts of appeals. The petition should therefore be denied.

1. Petitioners base their contention almost entirely on the fact that Section 8c(5)(A) and (C) of the Act, 7 U.S.C. 608c(5)(A), (C), (App., *infra*, pp. 16, 17), authorizes the formulation of an Order only in terms

of milk "purchased" by handlers. Petitioners reason that milk which a handler has himself produced is not milk "purchased" within the meaning of the Act because the handler has not entered into "a contract of purchase, *i.e.*, a commercial transaction between two or more separate entities or persons" (Pet. 7).

But this Court has already construed the term "milk purchased", for purposes of Section 8c(5) of the Act, to mean simply milk "acquired"; therefore, it necessarily follows that the section does permit handlers to be regulated with respect to all milk received by them, whether coming from their own farms or from other sources. In *United States* v. *Rock Royal Co-op.*, 307 U.S. 533, suit had been brought against four dairy cooperatives to compel them to comply with the requirements of Order No. 27. One of the cooperatives claimed that it was exempt from regulation since it acted merely as a marketing agent for its members and therefore could not be deemed to "purchase" milk as contemplated by Section 8c(5)(A) and (C). This Court pointed out that such a narrow interpretation of the Act, requiring a distinction between the "agency" and "sale" types of cooperatives, was unjustified and would render the regulatory scheme nugatory. The Court held that, as used in the Act, "the word 'purchased' means 'acquired for marketing.'" 307 U.S. at 580.[5] Similarly in *Shawangunk Coopera-*

[5] Judge Hastie's dissenting opinion below reasoned that this definition of "purchased" must be restricted to the situation involved in the *Rock Royal Co-op.* case because "the Court caused [that] decision to turn upon the fact that Congress had made subsection 8c(5)(F) expressly applicable to both types of cooperatives, thereby indicating that no distinction should be made between types of cooperatives in the companion subsections 8c(5)(A) and (C)"

tive Dairies, Inc. v. *Jones, et al.*, 153 F. 2d 700 (C.A. 2), the court rejected a handler's contention that he was not accountable for certain milk under Order No. 27 because he had not "purchased" the milk within the meaning of the Act, but was merely in the position of a gratuitous bailee. The court of appeals pointed out that in the *Rock Royal Co-op.* case this Court had already settled the question by interpreting the statutory word "purchased" as being equivalent to "acquired for marketing". The Second Circuit added that "acquired" meant simply "received" (153 F. 2d at 704). The rule of the *Rock Royal Co-op.* case was also applied by the First Circuit in *Elm Spring Farm* v. *United States*, 127 F. 2d 920, 927.

Petitioners sought to distinguish these cases on the ground that although the term "purchased" could be construed to mean "acquired" or "received" in a situation in which milk had been transferred between two or more parties, the term should not be so construed in the present case where only one party exists (as both producer and handler) and therefore does not "transfer" milk. The court below correctly pointed out the fallacy in this distinction (Pet. App. 73):

> Such reasoning would mean that Congress intended to regulate a handler if he was the agent of a producer, but not a handler who is also a producer, although the effect in both instances is the same. Should the fact of agency make such a crucial difference? We do not think that such an illogical distinction was intended.

(Pet. App. 86). But since "purchased" was construed to mean "acquired for marketing" to achieve the purposes of the Act with regard to cooperatives, there is no reason why it should not similarly be construed to effectuate the policies of the Act in the present case.

2. When the Agricultural Marketing Agreement Act is read as a whole, it is clear that the use of the word "purchase" was not meant to preclude the regulation of handlers who produce their own milk. Section 8c(5)(C) (App., *infra*, p. 17) in authorizing the adjustment of payments among handlers specifically provides that such regulation is applicable to "producers who are also handlers." The obvious intent of this clause was to subject handlers to regulation with respect to milk which they themselves produced. Petitioners have suggested that this clause was included merely to make it clear that producer-handlers could be made accountable to the pool on milk purchased from other producers. But such a construction would reduce the clause to surplusage because a handler is undoubtedly subject to regulation with respect to milk purchased from others, whether or not he also produces milk himself.

Moreover, the Act provides that no marketing order "shall be applicable to any producer in his capacity as a producer." 7 U.S.C. 608c(13)(B) (App., *infra*, pp. 17-18). The necessary implication of this provision is that a handler is exempt from regulation *only* in his capacity as a producer, but is not exempt under any circumstances in his capacity as a handler. See *Acme Breweries* v. *Brannan*, 109 F. Supp. 116 (N.D. Cal.). Furthermore, as the court below pointed out (Pet. App. 77-79), there is authoritative legislative history which shows that Congress intended to regulate producer-handlers in their capacity as handlers. 79 Cong. Rec. 11138, 11140.

3. The lower court's construction of the Act and the Order is also in accord with the purposes of the Act. On the basis of the evidence adduced at public hearings

on Order No. 27, the Secretary of Agriculture found, that, with regard to the relevant marketing area, "exemption of producer-distributors from regulation would open the way to unwarranted expansion by such distributors and * * * unfair advantage could be taken of the market-wide pool at the expense of other producers and handlers" (Pet. App. 41; *Jacob Tanis, et al.*, 17 Agri. Dec. 1091, 1103; see 22 F.R. 4194, 4218-4219). In general, producer-distributors produce and market high return or fluid utilization milk (Pet. App. 29, 41). If they were not required to make payments into the Producer Settlement Fund with respect to their milk utilization, they could effectively circumvent the purpose of the Act to make *all* handlers share in the burden of surplus or low return milk. See *United States* v. *Rock Royal Co-op., supra*, 307 U.S. at 580. They would thereby also gain competitive advantage over other handlers who are accountable to the Fund for their high return sales. In addition, if exempt from regulation, producer-distributors could avoid the necessity of sharing the more profitable fluid milk market with the other producers, and thereby cause a reduction in the uniform price received by those producers (see Pet. App. 41, 58). See also *Nebbia* v. *New York*, 291 U.S. 502, 517-518.[6]

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[6] The exemptions afforded by Section 927.65(h). (App., *infra*, p. 19; see footnote 4, *supra*, p. 6) were formulated by the Secretary on the basis of his finding that the volume of milk involved was not substantial enough to constitute a serious competitive factor in the marketing area. See 22 F.R. 4218. "Since the Secretary was not required by the Act to create any such exception, he had a wide discretion as to the manner in which he contrived it." *Queensboro Farms Products* v. *Wickard*, 137 F. 2d 969, 980 (C.A. 2).

4. Contrary to petitioner's contentions (Pet. 6-7)[7], "from the very beginning the Department of Agriculture has construed the Act so as to permit regulation of producer-handlers in their capacities as handlers" (Pet. App. 77). The statutory authorization for the issuance of milk marketing orders, which became effective August 24, 1935 (49 Stat. 750), contained the present Sections 8c(1), 8c(5)(A), 8c(5)(C), and 8c(13)(B), which were re-enacted by the Agricultural Marketing Agreement Act of 1937, 50 Stat. 246. During all of the time since the Act of August 24, 1935, milk marketing orders have provided for the regulation of handlers with respect to milk produced by those handlers.[8] In fact, even prior to the

[7] Petitioners also urge that the regulatory scheme imposes a confiscatory "penalty" or "tax" on handlers in their position (Pet. 8). This assertion is wholly without merit. It can be readily seen that the effect of the Order is merely to place such handlers in the same position as the other regulated handlers.

That Congress contemplated the creation, in appropriate marketing areas, of an "equalization fund" to adjust payments among handlers with regard to their utilization of milk is made plain by the provisions of Section 8c(5)(C) of the Act, 7 U.S.C. 608c(5)(C). That some of the orders do not make use of an equalization fund (see Pet. 8) is beside the point, because, in some of the marketing areas, the device deemed appropriate is an "individual handler pool." See, *e.g.*, 7 C.F.R. Part 961. Even in these areas, however, it is common to regulate the handler on the basis of his own milk production as well as that received from others.

[8] See, *e.g.*, the handler definition in Order No. 11 for Washington, D. C., effective September 21, 1936, on file in the National Archives; Section 903.1(e) and (f) of the St. Louis Order, effective April 5, 1939, 7 C.F.R. (1939 Supp.) 903.1(e), (f); Section 912.1(c) and (d) of the Dubuque, Iowa, Order, effective June 16, 1939, 7 C.F.R. (1939 Supp.) 912.1(c), (d); Section 904.1(e) and (f) of the Greater Boston Order, effective February 4, 1940, 7 C.F.R. (1940 Supp.) 904.1(e), (f); Section 961.1(a)(5) and (6) of the

Act of August 24, 1935, the Agricultural Adjustment Act of 1933, 48 Stat. 31, as amended, provided for the issuance of licenses applicable to the marketing or handling of milk; these licenses also regulated handlers who distributed milk of their own production. See, *e.g.*, Art. II, § 1, pars. 5 and 7 of the amended license for the Chicago milk marketing area, on file in the National Archives.

5. In final support of their contentions, petitioners point (Pet. 5-6) to the decision rendered by the United States District Court for the Southern District of Mississippi in *Benson* v. *L. B. Vance, et al.* (Civil No. 1495, May 14, 1960), appeal pending *sub nom. Freeman* v. *L. B. Vance, et al.* (No. 18,731, C.A. 5). The *Vance* case involves the validity of certain provisions of Milk Marketing Order No. 87, 7 C.F.R. Part 987, applicable to the handling of milk in the Central Mississippi Marketing Area, which—like the provisions of Order No. 27 here challenged—subject handlers to regulation with respect to their own farm production. The district court held that such regulation was not authorized by the Act, relying upon the same arguments advanced by petitioners in the present case.

The Court of Appeals for the Fifth Circuit heard the government's appeal from this ruling on April 25, 1961, but has not yet rendered its decision. There is therefore, no existing conflict between the circuits. The

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Philadelphia Order, effective April 1, 1942, 7 F.R. 2377, 2378; Section 945.3(e) and (f) of the Washington, D. C., Order, effective November 3, 1945, 7 C.F.R. (1945 Supp.) 945.3(e), (f). Such a flexible approach, gearing the terms of an order to the particular economic conditions existing in a specific marketing area at a given time, is required by the provisions of the Agricultural Marketing Agreement Act of 1937. See 7 U.S.C. 608c(11)(C).

isolated—and, we submit, erroneous—decision of one district court does not provide a sufficient basis for granting certiorari.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition should be denied.

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August, 1961

APPENDIX

The Agricultural Marketing Agreement Act of 1937, 50 Stat. 246, as amended, 7 U.S.C. 601, *et seq.*, provides, in pertinent part:

§ 608c. Orders regulating handling of commodity.

* * * * * * * * *

(5) *Milk and its products; terms and conditions of orders.*

In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7) of this section) no others:

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers:

(B) Providing:

(i) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them: *Provided*, That, except in the case of orders covering milk products only, such provision is approved or favored by at least three-fourths of the producers who, during a representative period

determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from any other approval or disapproval provided for by this section; or

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered; subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered, (c) the locations at which delivery of such milk is made, and (d) a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their marketings of milk during a representative period of time.

(C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this subsection, providing a method for making adjustments in payments, as among handlers (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the prices fixed in accordance with paragraph (A) of this subsection.

* * * * * * * * *

(13) *Retailer and producer exemption.*

* * * * * * * * *

(B) No order issued under sections 601-604, 607, 608, 608a, 608b, 608c, 608d, 608e-1, 608f-612, 613, 614-619, 620, 623, and 624 of this title shall be applicable to any producer in his capacity as a producer.

* * * * * * * * *

Section 927.65 of Milk Marketing Order No. 27, effective August 1, 1957, 22 F.R. 4652-4653, provides:

§ 927.65. *Net pool obligation of handlers.* The handler's net pool obligation shall be computed pursuant to paragraphs (a) through (g) of this section: *Provided*, That milk specified in paragraph (h) of this section shall be eliminated from this computation and such milk shall be deemed to be excluded by the phrase "milk received from producers" as such phrase is used in this section and in §§ 927.43, 927.66, 927.79, 927.81, 927.82, and 927.90.

(a) Determine the classification pursuant to §§ 927.30 through 927.37 of milk received from producers at each pool plant;

(b) Subject to adjustments for appropriate differentials pursuant to §§ 927.41 and 927.42, multiply the milk in each class by the class price, multiply the skim milk subject to the fluid skim differential by the fluid skim differential, and add together the resulting values;

(c) Deduct, in the case of each plant where the average butterfat content of all milk received from producers is in excess of 3.5 percent, and add, in the case of each plant where the butterfat content of all milk received from producers is less than 3.5 percent, the total value of the butterfat differential applicable pursuant to § 927.72;

(d) Deduct, in the case of each plant nearer New York City than the 201-210 mile zone, and

add, in the case of each plant farther from New York City than the 201-210 mile zone, the sum obtained by multiplying the milk received from producers by the zone differential set forth in column B of the schedule in § 927.42 applicable to the plant;

(e) Deduct the total amount of the butter-cheese adjustment computed pursuant to § 927.43;

(f) Deduct the total value of the nearby differential to be paid producers pursuant to § 927.71(b). The computation to this point shall be known as the handler's net pool obligation;

(g) Add together the handler's net pool obligation for all plants at which milk was received from producers; and

(h) Milk specified in subparagraphs (1) through (3) of this paragraph shall be excluded from the computation of the handler's net pool obligation pursuant to this section.

(1) Milk received from farms in Nassau and Suffolk Counties in New York, which farms are not approved for sale of milk in New York City and milk received from farms in New York City.

(2) Milk received at a handler's plant not in excess of an average of 800 pounds per day from such handler's own farm in the event that no milk is received at such plant from other dairy farmers but is received from other plants.

(3) All milk received at a handler's plant from such handler's own farm in the event that no milk is received from any other source at such plant.

Section 927.65 was amended on September 1, 1958 (23 F.R. 6737, 6739-6740), as follows:

Amend § 927.65(h)(2) and (3) to read as follows:

"(2) Own farm milk not in excess of an average of 800 pounds per day if the handler is not a producer-handler designated pursuant to § 927.15 and if the volume of milk, other than own farm milk, handled does not exceed an average of 1,600 pounds per day.

"(3) All milk handled by a producer-handler designated pursuant to § 927.15 which is derived from such producer-handler's production resources and facilities."

Amend § 927.65(h) by inserting a new subparagraph (4) as follows:

"(4) Own farm milk of a charitable, religious, educational or governmental institution which is not engaged in the practice of receiving bulk milk from other sources for processing or packaging and is not engaged in the practice of selling packaged milk to persons not associated with such institution."